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AZ CORP COMMISSION
DOCUMENT CONTROL

NEW

Arizona Corporation Commission
DOCKETED

JAN 23 2003

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CAR

In the matter of:

TIERRA GROUP, a/k/a TIERRA GROUP
PROPERTIES, a/k/a TIERRA GROUP
COMPANIES, a/k/a TIERRA GROUP, INC.,
10105 East Via Linda Drive, Suite 103-330
Scottsdale, Arizona 85258

PRESERVATION TRUST CORPORATION,
a/k/a PRESERVATION CORPORATION,
a/k/a PRESERVATION TRUST COMPANY,
10105 East Via Linda Drive, Suite 103-330
Scottsdale, Arizona 85258

PARTNERSHIP PRESERVATION TRUST,
a/k/a PARTNERSHIP PRESERVATION
CORPORATION LIMITED PARTNERSHIP,
10105 East Via Linda Drive, Suite 103-330
Scottsdale, Arizona 85258

CATERPILLAR FOUNDATION
PROPERTIES, a/k/a CATERPILLAR
FOUNDATION PROPERTIES LIMITED
PARTNERSHIP,
10105 East Via Linda Drive, Suite 103-330
Scottsdale, Arizona 85258

RENE L. COUCH, a married man
10727 East Palm Ridge Drive
Scottsdale, Arizona 85259

TERRY COUCH, a married woman
10727 East Palm Ridge Drive
Scottsdale, Arizona 85259,

Respondents.

DOCKET NO. S-03437A-03-0000

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
ORDER FOR RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES,
AND FOR OTHER AFFIRMATIVE
ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Tierra Group, a/k/a Tierra Group Properties, a/k/a Tierra Group Companies, a/k/a Tierra Group Inc. ("TIERRA"), Preservation Trust Corporation, a/k/a Preservation Corporation, a/k/a Preservation Trust Company ("PRESERVATION"), Partnership Preservation Trust, a/k/a Partnership Preservation Corporation Limited Partnership ("PARTNERSHIP PT"), Caterpillar Foundation Properties, a/k/a Caterpillar Foundation Properties Limited Partnership ("CATERPILLAR"), and Rene L. Couch ("COUCH") have engaged in acts, practices, and transactions which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. TIERRA, whose last known business address was 10105 East Via Linda Drive, Suite 103-330, Scottsdale, Arizona, is an Arizona corporation involved in local land speculation, investment and development. In connection with these activities, TIERRA engaged in the solicitation of investment funds for the alleged purpose of acquiring parcels of undeveloped real estate west of Phoenix, Arizona, in an area near the White Tank Mountains.

3. PRESERVATION, whose last known business address was also 10105 East Via Linda Drive, Suite 103-330, Scottsdale, Arizona, is an Arizona corporation involved in local land speculation, investment and development. In connection with these activities, PRESERVATION engaged in the solicitation of investment funds to support the land speculation activities of affiliated

1 companies and partnerships, and also participated in the management, control, and disbursement of
2 investment funds raised in support of these same operations.

3 4. PARTNERSHIP PT, whose last known business address was also 10105 East Via
4 Linda Drive, Suite 103-330, Scottsdale, Arizona, is an Arizona partnership involved in local land
5 speculation, investment and development. In connection with these activities, PARTNERSHIP PT
6 engaged in the solicitation of investment funds from partners for the alleged purpose of acquiring
7 parcels of undeveloped real estate west of Phoenix, Arizona, in an area near the White Tank
8 Mountains.

9 5. CATERPILLAR, whose last known business address was 10105 East Via Linda
10 Drive, Suite 103-330, Scottsdale, Arizona, is an Arizona limited partnership purportedly involved in
11 local land speculation, investment and development. In connection with these activities,
12 CATERPILLAR engaged in the solicitation of investment funds from investors for the alleged
13 purpose of buying parcels of real estate in the greater Phoenix, Arizona area.

14 6. COUCH, whose last known address was 10727 East Palm Ridge Drive, Scottsdale,
15 Arizona, was the founder and president of TIERRA and PRESERVATION, the founder and sole
16 general manager of PARTNERSHIP PT, and the founder and sole general partner of
17 CATERPILLAR. In these capacities, COUCH raised investment funds and made speculative real
18 estate acquisitions throughout the metro Phoenix area. COUCH also coordinated the financial
19 dealings of these multiple entities, exercising ultimate control over the entities' banking activities.

20 7. Terry Couch ("MS. COUCH"), whose last known address was 10727 East Palm
21 Ridge Drive, Scottsdale, Arizona, was the spouse of COUCH during the time period in which
22 COUCH formed various real estate investment entities, raised substantial investment funds, and
23 acquired various parcels of real estate in Maricopa County, Arizona. In her spousal capacity, MS.
24 COUCH maintained control over investment funds from one or more of the aforementioned entities'
25 bank accounts on multiple occasions. MS. COUCH is joined in this action under A.R.S. § 44-
26 2031(C) for the purpose of determining the liability of the marital community.

9. All Respondents, except for MS. COUCH, may be collectively referred to as “RESPONDENTS.” MS. COUCH may, from time to time, be referred to as “RESPONDENT SPOUSE.”

FINDINGS OF FACT

8 10. COUCH, in his varying capacities as president and managing partner, has been
9 operating a multitude of real estate investment programs as far back as 1987. During this time,
10 COUCH and his agent have raised well over five million dollars in investment funds through the
11 sale of such securities as limited partnership "units" and real estate "bridge notes."

11. During the 1980's, COUCH formed a variety of limited partnerships with the intent of acquiring undeveloped parcels of real estate for subsequent resale. Selling limited partnership units to over a hundred Arizona investors, COUCH raised a large amount of investment capital and began purchasing various plots of real estate in the West Valley of metro Phoenix. In connection with these partnerships, COUCH collected annual membership dues from the limited partners ostensibly to cover real estate costs and management fees.

12. The investment proceeds from limited partners were periodically deposited into one or more of TIERRA'S corporate bank accounts. As early as 1988, COUCH began using funds from one particular TIERRA corporate account to meet the quarterly payments on a universal life insurance policy for the benefit of a COUCH trust. These payments, reaching into the tens of thousands of dollars, were not disclosed in connection with the real estate investment programs promoted and managed by COUCH.

24 13. In early 1988, COUCH approached an insurance agent by the name of Wallace
25 Cunningham, Jr. ("Cunningham"), an acquaintance that had previously worked on one or more of

1 COUCH'S insurance policies. Cunningham had an established base of loyal insurance clients at the
2 time.

3 14. COUCH asked Cunningham to assist in bringing new investors into one or more of
4 COUCH'S new real estate limited partnerships. As an incentive to gain Cunningham's
5 participation, COUCH promised Cunningham a sales commission of 18.57% for selling all forty
6 units in one of COUCH'S limited partnership, West Valley Equity Partners II ("West Valley").

7 15. Cunningham subsequently agreed to sell COUCH'S membership units in West
8 Valley, ultimately raising \$112,000 for this particular partnership. In the offering documents
9 associated with this real estate investment program, COUCH was again listed as the sole managing
10 partner. There were, however, no disclosures as to the 18.57% sales commission involved in the
11 procurement of limited partners for West Valley.

12 16. COUCH had no prior associations or dealings with the West Valley investors at the
13 time of the investments, and he failed to provide West Valley investors access to either the
14 partnership's records or its financial affairs. Investors received information about their West Valley
15 investments through periodic letters known as "Tierragrams."

16 17. By 1990, COUCH was affiliated with at least a dozen partnerships; however, several
17 of these limited partnerships had been suffering financial set-backs and other business-related
18 problems. On account of these developments, COUCH declared that all his partnerships would be
19 consolidated into one all-encompassing partnership known as PARTNERSHIP PT.

20 18. As detailed in a June 1990 letter to his limited partners, COUCH explained the
21 consolidation of the following limited partnerships into PARTNERSHIP PT: Plumlee; Tierra
22 Verde; KLB; Helms; RRR & D; Boreyko, GWP, Johnson & Thomas, SV 40, MB, West Valley,
23 Cortez, JRH, Eye West, One Iron, Antenucci, Lawrence, and BLAC limited partnerships.

24 19. In connection with this consolidation, COUCH informed the various partners that
25 they would still have to make annual dues payment as described under their original limited
26 partnership agreements if they were to remain as partners in the new PARTNERSHIP PT.

1 20. COUCH also explained that PARTNERSHIP PT would be taking over the
2 “promising” Buckeye Airport property as the new partnership’s real estate asset, a property
3 consisting of five separate parcels that the consolidated limited partnerships of JRH, Eye West, One
4 Iron, Antenucci, Lawrence, and BLAC had previously bought from Alder Farms in June, 1990.

5 21. In September 1990, COUCH acquired the five Alder Farms parcels on behalf of
6 PRESERVATION PT for approximately \$543,000 each. COUCH financed these acquisitions by
7 paying approximately \$100,000 in additional earnest money and closing costs and by assuming,
8 from the above-mentioned partnerships, five \$394,000 Alder Farms promissory notes and five
9 \$126,000 TIERRA notes.

10 22. By August, 1991, PARTNERSHIP PT had title over these five Buckeye properties
11 and the properties had been recorded in the partnership’s name. By mid 1992, however,
12 PARTNERSHIP PT had defaulted on the parcels’ mortgage payments, and in July, 1992, Alder
13 Farms foreclosed on the five properties. Alder Farms reclaimed title to the properties in August,
14 1992.

15 23. Shortly thereafter, in September 1992, PARTNERSHIP PT announced to its
16 partners that it had acquired a new and preferable parcel of property in Buckeye, Arizona at the
17 intersection of McDowell and Dean Road (the “McDowell Property”). The McDowell Property
18 was purchased from Citibank, and consisted of four parcels of land totaling approximately 149
19 acres.

20 24. Despite receiving funding for the McDowell Property through PARTNERSHIP PT
21 partner contributions, and subsequently holding the property out as PARTNERSHIP PT’S prime
22 real estate asset, COUCH nevertheless recorded the property in the name of PRESERVATION.

23 25. COUCH has since represented that the property was purchased in the name of
24 PRESERVATION rather than PARTNERSHIP PT for the single reason that the seller of the
25 McDowell Property, Citibank, preferred to transact business with a corporation over a partnership.

26 ...

1 26. In connection with the aforementioned land acquisitions, COUCH also began
2 engaging in the sale of promissory notes to both existing limited partners and outside investors. As
3 early as 1991, COUCH started issuing "bridge loan" promissory notes through two of his real estate
4 entities - TIERRA and PRESERVATION. These notes routinely offered investors an approximate
5 10 to 14 per cent rate of return per annum, and the maturity dates on these notes regularly ranged
6 from 3 to 5 years.

7 27. COUCH often tapped his former limited partnership sales agent, Cunningham, for
8 assistance in selling these notes. Meeting on an almost daily basis, COUCH engaged Cunningham
9 to pitch these promissory notes to his circle of insurance clients, many of who had already been
10 persuaded to invest in one or more of the original limited partnerships.

11 28. COUCH offered Cunningham a substantial commission to sell the "bridge loan"
12 notes issued out of PRESERVATION and TIERRA; this commission was never discussed with the
13 note investors before or at the time of their investments.

14 29. For orchestrating or otherwise participating in these promissory note sales, COUCH
15 also periodically withdrew a \$5,000 fee from the investment proceeds. This skimming practice was
16 similarly withheld from investors.

17 30. The purported objective behind COUCH'S sale of bridge notes was to meet ongoing
18 real estate payment obligations, to fund the purchase of available limited partnership units in
19 PARTNERSHIP PT, and to pay accruing management fees prior to the time that PARTNERSHIP
20 PT'S asset could be liquidated. In fact, the investment funds acquired through the sale of these
21 notes were soon designated for ulterior purposes, discussed *infra*.

22 31. In 1994, PRESERVATION filed for Chapter 11 bankruptcy, attempting to re-
23 organize its mounting liabilities on the McDowell Property. During the course of this bankruptcy,
24 Citibank filed a motion to lift the automatic stay and foreclose upon the McDowell Property that the
25 bank had sold to PRESERVATION just two years earlier.

26 ...

1 32. Citibank and PRESERVATION ultimately reached a settlement whereby the bank
2 agreed to accept \$245,000 as payment in full for the remaining balance of approximately \$345,000
3 due on the McDowell Property. In November, 1994, PRESERVATION satisfied the remaining
4 amounts due under this agreement by taking out a \$190,000 loan from Stardust Development
5 ("Stardust").

6 33. With the McDowell Property no longer in jeopardy of foreclosure,
7 PRESERVATION withdrew its bankruptcy filing. It did, however, still have a \$190,000 note to
8 satisfy from Stardust with an annual interest rate of 23 per cent.

9 34. By 1995, PRESERVATION had a promissory note obligation in favor of Stardust
10 for approximately \$190,000, and both TIERRA and PRESERVATION had a number of bridge
11 loans coming due to individual investors. By 1996, COUCH and his companies owed investors
12 several hundred thousand dollars in promissory note debt.

13 35. With the financial obligations once again mounting, PARTNERSHIP PT'S single
14 asset - the McDowell Property - remained unsold. This situation was exacerbated by the fact that
15 hundreds of limited partners from multiple limited partnerships were now dependent upon just one
16 piece of real estate. As a result of these many equitable interests, the property had to command a
17 considerable sales price for either COUCH or the limited partners to recognize a profit from such a
18 sale.

19 36. In early 1997, with the property still on the market, COUCH resolved to transfer
20 ownership of a segment of the McDowell Property over to a land broker and to a local consultant to
21 satisfy outstanding debt obligations. To effect this plan, COUCH deeded a roughly 10 acre parcel
22 of the McDowell Property over to an investment group made up of Thora, L.L.C.,¹ and Joseph
23 Blackbourn in November, 1997.

24
25
26 ¹ The managing member of Thora, L.L.C., is Greg Vogel, a commercial land dealer who was engaged by COUCH to act as the real estate broker for the McDowell Property. Mr. Vogel has been an acquaintance of COUCH since at least the mid 1990's.

1 37. Although the McDowell Property was later appraised by Greg Vogel at \$30,000 per
2 acre, this 10 acre parcel was purportedly conveyed to Thora, L.L.C. and Mr. Blackburn to satisfy a
3 prior \$30,000 debt obligation for brokerage and consulting fees.²

4 38. At approximately the same time, COUCH surreptitiously deeded the remainder of
5 the McDowell Property from PRESERVATION to himself and his wife. COUCH officially
6 recorded his personal ownership over the remaining McDowell Property on December 9, 1997.

7 39. Both COUCH'S self-conveyance and the transfer of the 10 acre parcel to outside
8 parties occurred without the requisite authority or disclosures, and without other PARTNERSHIP
9 PT partners' knowledge or consent. The type of consideration tendered in these particular
10 transactions, and the party or parties receiving such consideration, was similarly not disclosed.

11 40. COUCH subsequently explored options of mortgaging the remaining parcels of land
12 for access to additional funds. Ultimately, COUCH was successful in obtaining a \$490,000
13 mortgage on the McDowell Property from a syndicate made up of SMT Investors Limited
14 Partnership ("SMT"), David and Christine Neal (the "Neals"), and Arizona Land Advisors.³ This
15 non-recourse debt was incurred by COUCH and MS. COUCH on or about September 17, 1999.

16 41. This material dissipation of PARTNERSHIP PT equity was unauthorized both under
17 PARTNERSHIP PT'S offering documents and under the partnership's operating agreement.

18 42. COUCH ultimately borrowed funds from SMT, the Neals and AZ Land Advisors on
19 two additional occasions, drawing a \$162,000 note on the McDowell Property on or about
20 September 14, 2000, and adding another \$102,177 to the total outstanding debt on June 12, 2001.

23 ² The 10 acre parcel conveyed to the two outside entities is recorded in the Maricopa County
24 Recorder's Office as Parcel No. 502-61-002J.

25 ³ The president of Arizona Land Advisors is the familiar Greg Vogel, the same individual whose
26 involvement with the McDowell Property had already ranged from receiving a portion of the
property for past services to acting as the commercial broker for the McDowell Property on behalf
of PRESERVATION.

1 The final \$102,000 loan was made payable to COUCH despite the fact that the McDowell Property
2 had already been deeded back to PRESERVATION the prior year, in October, 2000.

3 43. In total, the principal amount of indebtedness incurred on the McDowell Property by
4 COUCH from 1999 to 2001 amounted to approximately \$760,000. In addition to this principal, a
5 considerable amount of interest has been accruing on the debt at rates ranging as high as 20 per cent
6 per annum.⁴

7 44. COUCH used these loan proceeds for various undisclosed purposes, including
8 personal expenditures and for the infusion of capital into COUCH'S personal nutritional
9 supplement business known as Infinity. Other funds were funneled to the personal bank accounts of
10 Ms. COUCH. Still other funds were used to satisfy long-standing promissory note debt obligations
11 to various individual investors. In another instance associated with the initial \$490,000 loan,
12 COUCH remitted a \$25,000 sum directly back to Arizona Land Advisors, one of the three lenders
13 participating in the original loan transaction.

14 45. Even while ownership of the McDowell Property was being deeded over to COUCH
15 and MS. COUCH, COUCH was still actively peddling new "bridge loan" promissory notes for
16 TIERRA and PRESERVATION. Using the McDowell Property as collateral for these notes,
17 COUCH, often through his agent Cunningham, was still offering newly issued promissory notes to
18 existing note holders to now meet the financial obligations of prior outstanding notes.

19 46. In fact, the proceeds raised from COUCH'S sale of promissory notes through the
20 late 1990's were used almost exclusively to satisfy the debt obligations of prior note holders. On
21 dozens of occasions, monies raised from the sale of TIERRA or PRESERVATION promissory
22 notes were immediately transferred to other bank accounts for use in satisfying prior note
23
24

25 ⁴ The original deed of trust (short form) for the first \$490,000 loan specified an annual interest
26 rate of 12% per annum. It's unclear from the recorded documentation how the 20% per annum
interest rate was ultimately imposed and retroactively assessed.

1 obligations. Often, monies raised through the sale of these notes were transferred to other investors
2 on the same or very next day.

3 47. Investors who purchased these promissory notes thought they were investing in
4 bridge loan notes to finance the end stages of real estate acquisitions and sales. In reality, these
5 funds were being transferred to other investors in a classic Ponzi operation.

6 48. In approximately 1998, COUCH also began issuing CATERPILLAR promissory
7 notes to still other investors. The offering documents associated with this note offering represented
8 that these investment funds were to be used to purchase real estate for subsequent resale; in fact,
9 these monies were used in an identical fashion to the previous PRESERVATION and TIERRA note
10 proceeds: the CATERPILLAR note proceeds were again immediately transferred to meet the debt
11 obligations of other investors holding PRESERVATION and/or TIERRA notes.

12 49. CATERPILLAR note proceeds were transferred within days to intermediary
13 accounts that would quickly remit the funds to meet outstanding debt obligations to prior note
14 holders. None of the CATERPILLAR note proceeds were used to purchase real estate or any other
15 form of property, and investors were never informed that their investment monies were simply
16 being used to satisfy prior corporate debt obligations.

17 50. COUCH and agent Cunningham continued to sell promissory notes issued by one or
18 more of TIERRA, PRESERVATION, or CATERPILLAR until late 2000, when the promissory
19 note sales operations were finally discontinued. COUCH subsequently defaulted on the outstanding
20 notes.

21 51. In October, 2000, COUCH and MS. COUCH deeded the remaining McDowell
22 Property back to PRESERVATION, now consisting of one less parcel of land. In re-acquiring the
23 McDowell Property, PRESERVATION also inherited COUCH'S mortgage liability – a loan now
24 secured against the property for roughly \$1,074,000.

1 52. Unlike COUCH, PARTNERSHIP PT investors were not privy to, nor did they
2 derive any personal gain from, the now substantially diminished equity in the partnership's single
3 real estate asset.

4 53. Once again under PRESERVATION'S control, the McDowell Property remained on
5 the open market through the next year. By 2001, both note holders and the many PARTNERSHIP
6 PT partners had yet to recoup a return on their investments. Concerned over defaulting notes and
7 the lack of movement on the property supporting the limited partners' interests, one or more of the
8 investors ultimately filed a Petition for Involuntary Bankruptcy against the RESPONDENTS.

9 54. This bankruptcy filing was subsequently converted to a Chapter 11 liquidation, and
10 the proceedings remain currently in progress. In connection with this filing, PRESERVATION has
11 listed each affiliated company and partnership - including PARTNERSHIP PT, TIERRA and
12 CATERPILLAR - as an actual "d/b/a" of PRESERVATION.

13 55. During the course of these proceedings, PRESERVATION has acknowledged that
14 the company has roughly 400 creditors, and that approximately 6 million dollars in creditors' claims
15 exist against the company. Division records confirm that a minimum of 200 investors have indeed
16 invested in one or more of COUCH'S limited partnership and promissory note programs since
17 1987. These records also show that of these many investors, an investment amount exceeding 5
18 million dollars flowed into these various programs.

19 56. In an effort to ascertain the manner, level and extent of COUCH'S involvement in
20 these assorted investment programs, the Division subpoenaed COUCH into its offices to inquire into
21 events relating to this operation. When asked to explain his role in the sales activities of TIERRA,
22 PRESERVATION and CATERPILLAR, COUCH invoked his 5th Amendment privilege against self-
23 incrimination and refused to answer any such questions. When asked to explain what role each of
24 the foregoing companies played in this real estate investment program, COUCH again invoked his
25 5th amendment rights and refused to answer the question. When asked whether he had profited from
26

1 the activities relating to this matter, COUCH once again refused to answer any questions on 5th
2 Amendment grounds.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

5 **(Offer or Sale of Unregistered Securities)**

6 57. From at least 1987, RESPONDENTS offered or sold securities, in the form of
7 investment contracts and promissory notes, within or from Arizona.

8 58. The securities referred to above were not registered pursuant to the provisions of
9 Articles 6 or 7 of the Securities Act.

10 59. This conduct violates A.R.S. § 44-1841.

11 **V.**

12 **VIOLATION OF A.R.S. § 44-1842**

13 **(Transactions by Unregistered Dealers or Salesmen)**

14 60. RESPONDENTS offered or sold securities, within or from Arizona, while not
15 registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

16 61. This conduct violates A.R.S. § 44-1842.

17 **VI.**

18 **VIOLATION OF A.R.S. § 44-1991**

19 **(Fraud in Connection with the Offer or Sale of Securities)**

20 62. In connection with the offer or sale of securities within or from Arizona,
21 RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii)
22 made untrue statements of material fact or omitted to state material facts which were necessary in
23 order to make the statements made not misleading in light of the circumstances under which they
24 were made; and/or (iii) engaged in transactions, practices or courses of business which operated or
25 would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes,
26 but is not limited to, the following:

- a) Misrepresenting to investors that the sale of "bridge loan" promissory notes were to be used to complete the acquisition and/or sale of real estate, when in fact the investment proceeds were uniformly used to satisfy prior investor debt obligations as part of a classic Ponzi scheme;
- b) Misrepresenting to investors that RESPONDENTS' real estate holdings provided secure collateral for their promissory notes, when in fact RESPONDENTS knew that a substantial debt obligation was already secured against the property, that hundreds of investors already held partnership interests in the property, and that the property was already securing dozens of prior note holders;
- c) Failing to disclose to investors that COUCH was receiving proceeds from the sale of promissory notes for his own personal expenditures;
- d) Failing to disclose to investors that COUCH had conveyed the investors' property to COUCH and MS. COUCH in 1997, and had subsequently borrowed almost \$800,000 against the property in non-recourse loans;
- e) Failing to disclose to investors that COUCH had misappropriated funds from these non-recourse loans for personal benefit;
- f) Failing to disclose to investors that RESPONDENTS were paying a sizeable sales commission to at least one sale agent for his efforts in the sale of RESPONDENTS' various partnership units and corporate promissory notes;
- g) Failing to disclose that neither the aforementioned securities nor the RESPONDENTS themselves were registered with the Division as required by law.

63. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of COUCH and MS. COUCH be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS and/or RESPONDENT SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a RESPONDENT requests a hearing, the RESPONDENT must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
2 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
3 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
4 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
5 the Division in this Notice of Opportunity for Hearing.

6 Persons with a disability may request a reasonable accommodation such as a sign language
7 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
8 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
9 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
10 accommodation.

11 IX.

12 ANSWER REQUIREMENT

13 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
14 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer
15 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,
16 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
17 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
18 accompany the Answer. A cover sheet form and instructions may be obtained from
19 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
20 www.cc.state.az.us/utility/forms/index.htm.

21 Additionally, RESPONDENTS and/or RESPONDENT SPOUSE, or their attorney(s), must
22 serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division
23 may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West
24 Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Jamie Palfai, Esq.

25 The Answer shall contain an admission or denial of each allegation in this Notice, as well
26 as the original signature of either the answering RESPONDENT(S) and/or RESPONDENT

1 SPOUSE or their attorney(s). A statement of a lack of sufficient knowledge or information shall
2 be considered a denial of an allegation. An allegation not denied shall be considered admitted.

3 When RESPONDENTS and/or RESPONDENT SPOUSE intend in good faith to deny only
4 a part or a qualification of an allegation, RESPONDENTS and/or RESPONDENT SPOUSE shall
5 specify that part or qualification of the allegation and shall admit the remainder. RESPONDENTS
6 and/or RESPONDENT SPOUSE waive any affirmative defense not raised in the answer.

7 The officer presiding over the hearing may grant relief from the requirement to file an
8 Answer for good cause shown.

9 Dated this 23RD day of January, 2003.

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13 Mark Sendrow
14 Director of Securities
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Memorandum

RECEIVED

2003 JAN 23 P 2:45

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: January 23, 2003
TO: Nancy Cole
Docket Control
FROM: Jamie Palfai, Esq.
Securities Division
RE: Tierra Group, et al.
Docket No. S-03437A-03-0000
Assigned Staff
CC: LaShunda Duty

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- ☒ Mark Sendrow
- ☒ LeRoy Johnson
- ☐ Matthew Neubert

Jamie Palfai (Staff Attorney)

Gary Kirst (Staff Investigator)
